

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

ERIC MACK,

Plaintiff,

v.

OFFICE OF THE DISTRICT
ATTORNEY OF THE BRISTOL
DISTRICT,

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. This is an action under the Massachusetts Public Records Law, G.L. c. 66, § 10A, to compel disclosure of public records held by Defendant, Office of the District Attorney of the Bristol District (“District Attorney’s Office”) under the leadership of District Attorney Thomas M. Quinn III. Plaintiff, Eric Mack, seeks copies of public records relating to the District Attorney’s Office’s investigation into the death of Mr. Mack’s brother, Anthony Harden. The District Attorney’s Office sent a “Final Report” of this investigation to Plaintiff Eric Mack and held a press conference announcing the results of the investigation, which found the police officers did nothing wrong.

2. After receiving the final report, Mr. Mack filed a public records request seeking documents regarding the investigation into the death of his brother. The District

Attorney's Office responded claiming that they cannot produce the documents because there is an ongoing investigation. They also raised other issues for select documents.

3. The District Attorney's Office should not be permitted to assert the investigatory privilege while also publicly announcing the investigation's final conclusion. This attempt to delay providing public records should be rejected.

4. Plaintiff Eric Mack seeks a Court order requiring the District Attorney's Office to provide the records compiled for the investigation within 10 business days; to waive any fees otherwise allowed by the law; and to pay Plaintiff's attorney's fees and costs for this action.

PARTIES

5. Plaintiff Eric Mack is a resident of Fall River, Massachusetts.

6. Defendant Office of the District Attorney of the Bristol District has custody of the records at issue in this lawsuit and is an agency that is subject to the Massachusetts Public Records Law, G.L. c. 66.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under G.L. c. 66, § 10A(c) and (d).

8. Venue is proper in Suffolk County under G. L. c. 66, § 10A(c).

FACTS

9. On Monday, November 22, 2021, Fall River Police Officers Chelsea Campellone and Michael Sullivan were called to the home of Anthony Harden for a domestic disturbance.

10. The officers were in Mr. Harden's bedroom for a short time when Officer Campellone shot and killed Mr. Harden.

11. Defendant Office of the District Attorney of the Bristol District began an investigation to determine whether any crimes were committed during the death of Mr. Harden.

12. On December 22, 2021, the District Attorney's Office announced the result of its investigation. Defendant sent Eric Mack an email. The subject line states, "Final Report Attached." The text of the email says, "You can find the final report on the officer-involved shooting attached to this email." The email and the attachment are Exhibit 1 attached to this Complaint. The report concludes, stating:

The Fall River Police Officer's use of force was consistent with the Fall River Police Department's internal policy regarding the use of force and consistent with the law of self-defense and/or defense of others. Due to the sudden and violent nature of Mr. Harden's unprovoked attack, de-escalation tactics were not feasible based on all the circumstances. The use of force was not excessive because two shots were reasonable under the circumstance to prevent the officer from suffering seriously bodily injury and/or death.

Based on a review of all the facts and circumstances related to this incident, there is no basis to conclude that either Fall River Police Officer committed a crime. The fatal shooting of Mr. Harden by a Fall River Police Officer was justified and was the result of Mr. Harden's violent and armed assault on the male police officer.

13. The District Attorney's report says it determined that it had sufficient facts and circumstances to report its findings and conclusions.

14. The report says during the investigation, approximately 20 civilian and law enforcement witnesses were interviewed. All witnesses to Mr. Harden's death were identified

and interviewed. The District Attorney's Office does not expect to interview any additional witnesses.

15. Despite announcing a conclusion to the investigation, the report states that some evidence "is expected to undergo additional testing." However, "[a]lthough this testing hasn't been completed, the results, including toxicology results, **will not impact the conclusions** relating to the use of deadly force." (Emphasis added.) The report does not indicate when it expects the test results to be completed.

16. Bristol County District Attorney Thomas M. Quinn III held a press conference on December 22, 2021 and informed the press and therefore the public that his office had concluded that the Fall River police officers' conduct was justified and his office would not be bringing criminal charges against the officers, as described in the final report.

17. On January 10, 2022, Attorney Howard Friedman submitted a public records request on behalf of Eric Mack to the District Attorney's Office. The request sought:

- 1) Any and all documents relating to Fall River police officers and Anthony Harden on November 20-22, 2021. This includes, but is not limited to, all police reports, interviews with witnesses, narrative statements, diagrams, applications for criminal complaints, photographs, CAD reports, memoranda, notes, data, and other documents relating to these incidents.
- 2) All audio recordings concerning Mr. Harden on November 20-22, 2021 including but not limited to 911 calls, interviews, recordings of radio calls, phone calls or other records of calls.
- 3) Any and all video or photographs, including body cameras and vehicle cameras, that show Mr. Harden or the Fall River Police officers who interacted with him, starting before police arrived at Melville Street and ending after all police officers left Melville Street on November 22, 2021.
- 4) All documents relating to any investigations of incidents on November 20-22, 2021 involving a) allegations against Mr. Harden from a woman living on Lowell Street and b) Mr. Harden and Fall River police officers.

A copy of the public records request is attached to the Complaint as Exhibit 2.

18. On January 25, 2022, the District Attorney's Office responded by providing the letter attached as Exhibit 3. The response claims that all the requested documents are exempt from disclosure under G.L. c. 4, § 7, cl. 26(f), alleging the documents are "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."

19. Since the Defendant has released a final report on its investigation, making a select portion of the investigation public in the report, and has informed the public that its conclusion will not change based on any remaining testing, the Defendant cannot credibly claim that there is an ongoing investigation or that disclosure of the requested documents would prejudice effective law enforcement.

20. The Defendant has not provided a list of the documents it has refused to provide. Defendant's response claims it need not produce photographs, voice recordings, witness statements, notes or the identity of the police officers. Without a list of these documents these issues cannot be addressed here.

CLAIM
Violation of G.L. c. 66, § 10

21. The above paragraphs are incorporated by reference.

22. Defendant Office of the District Attorney of the Bristol District has violated the Massachusetts Public Records Law, G.L. c. 66, § 10, by failing to provide documents requested by Plaintiff and failing to provide a log of the withheld documents.

23. Defendant cannot assert the investigatory privilege while also announcing to the public the final resolution of the investigation. Defendant failed to provide a log of the documents that is has withheld.

24. Plaintiff is entitled to equitable relief in the form of an order that Defendant provide the documents he requested and a log of documents Defendant claims it may lawfully withhold.

25. Plaintiff requests that this court expedite this proceeding under G.L. 66 §10A (d)(1)(iii). This is appropriate here since this is a matter of public interest. Defendant has released the final result of its investigation to the public while refusing to provide documents in response to Plaintiff's public records request so Plaintiff and the public can learn if the conclusion is justified.

26. Plaintiff is entitled to attorney's fees and costs for bringing this action to secure compliance with his public records request.

WHEREFORE, Plaintiff requests that this Court

- (a) Issue a declaratory judgment under G.L. c. 231A or other applicable law that the District Attorney's Office has violated the Public Records Law by withholding the records responsive to Plaintiff's records request without a legal basis to do so;

- (b) Issue an injunction ordering the District Attorney's Office to provide all records responsive to Plaintiff's public records request within 10 business days of the Court's order;
- (c) Award Plaintiff's attorney's fees and litigation costs;
- (d) Require the District Attorney's Office to waive any fee otherwise assessable under G.L. c. 66, § 10(d) due to the agency's failure to comply with G.L. c.66;
- (e) Order the District Attorney's Office to pay punitive damages under G.L. c. 66, § 10A(d)(4) in the amount of \$5,000 to be deposited into the Public Records Assistance Fund; and
- (f) Order any additional relief the Court deems necessary and proper.

RESPECTFULLY SUBMITTED,
BY THE PLAINTIFF,

Howard Friedman, BBO #180080
Law Offices of Howard Friedman, PC
1309 Beacon St., Suite 300
Brookline, MA 02446
(617) 742-4100
hfriedman@civil-rights-law.com

Dated: February 2, 2022

Law Offices of Howard Friedman, P.C.

1309 Beacon Street, Suite 300
Brookline, MA 02446
www.civil-rights-law.com

Telephone
617-742-4100

Fax
617-303-3938

January 10, 2022

Via email: publicrecords@bristolda.com
Records Access Officer Mary Lee
Bristol County District Attorney's Office
888 Purchase Street
New Bedford, MA 02740

Re: Public Records Request

Dear Records Access Officer Lee:

This office represents Eric Mack. I am writing to request public records pursuant to M.G.L. c. 66, § 10(b).

As you know, District Attorney Thomas Quinn III released a report on Wednesday, December 22, 2021, concerning the fatal shooting of Anthony Harden. The report states, "at this point the facts and circumstances and applicable law and policies are sufficiently known to report these findings and conclusions." According to the District Attorney all that remains is testing of evidence.

District Attorney Quinn reported the results of his investigation stating:

Based on a review of all the facts and circumstances related to this incident, there is no basis to conclude that either Fall River Police Officer committed a crime. The fatal shooting of Mr. Harden by a Fall River Police Officer was justified and was the result of Mr. Harden's violent and armed assault on the male police officer.

This report was issued to the press. The conclusion was reported in the local newspapers and on local television stations as well as in news media in Massachusetts and beyond.

Since your office has reported the conclusion of this investigation, the documents that were used to support this conclusion from this investigation are now public records. It is important that the public learn the full facts from which the District Attorney's office came to its conclusion.

Specifically, I am requesting that you provide me with copies of the following public records:

1. Any and all documents relating to Fall River police officers and Anthony Harden on November 20-22, 2021. This includes, but is not limited to, all police reports, interviews with witnesses, narrative statements, diagrams, applications for criminal complaints, photographs, CAD reports, memoranda, notes, data, and other documents relating to these incidents.
2. All audio recordings concerning Mr. Harden on November 20-22, 2021 including but not limited to 911 calls, interviews, recordings of radio calls, phone calls or other records of calls.
3. Any and all video or photographs, including body cameras and vehicle cameras, that show Mr. Harden or the Fall River Police officers who interacted with him, starting before police arrived at Melville Street and ending after all police officers left Melville Street on November 22, 2021.
4. All documents relating to any investigations of incidents on November 20-22, 2021, involving a) allegations against Mr. Harden from a woman living on Lowell Street and b) Mr. Harden and Fall River police officers.

Please provide an index of all documents responsive to these requests. If you claim a document is exempt, please provide an itemized and indexed document log with a detailed justification for any claims of exemption. See, *Worcester Telegram & Gazette Corp. v. City of Police of Worcester*, 436 Mass. 378, 384 (2002). To the extent you fail to produce a particular document, please provide the basis for such refusal to allow us and/or a court to determine if your objection is valid.

I will be glad to pay the reasonable costs associated with producing these public records. If any of these records are stored electronically, please provide them to me in that format on a disc/drive or by email to carmengk@civil-rights-law.com. I look forward to hearing from you within ten days as required by statute.

If you have any questions about this request, please call me.

Sincerely,

A handwritten signature in black ink, appearing to be 'H. Friedman', with a long horizontal flourish extending to the right.

Howard Friedman

cc: District Attorney Thomas Quinn III

Exhibit 3



The Commonwealth of Massachusetts

OFFICE OF THE
DISTRICT ATTORNEY
BRISTOL DISTRICT

THOMAS M. QUINN III
DISTRICT ATTORNEY

888 Purchase Street
New Bedford, MA 02740
(508) 997-0711

January 25, 2022

Howard Friedman, Esq.
Law Offices of Howard Friedman, P.C.
1309 Beacon Street, Suite 300
Brookline, MA 02446
CarmenGK@civil-rights-law.com
BY E-MAIL ONLY

Re: Public Records Request

Dear Attorney Friedman:

On January 10, 2022, this office received your emailed request for public records on behalf of your client, Eric Mack. You have requested records relating to the fatal, officer-involved shooting of Anthony Harden, which occurred on November 22, 2021. This response is timely. G.L. c. 66, § 10(a) (response within ten business days from receipt of request).

Please be advised that your request for public records is denied at this time. The Public Records Law requires this office to explain the applicable exemptions.

This office is conducting a criminal investigation of the shooting and the preliminary findings of that criminal investigation were released to the public in December. The preliminary findings were conveyed to Mr. Mack by phone and his questions related to them were answered prior to the public release of the report. A copy of the report was then provided to Mr. Mack. As described in both the telephone call and in the report, the investigation has not yet come to an end. While the conclusions are unlikely to change, there are still outstanding tests and technical matters that need to be finalized before the investigation concludes. Records associated with ongoing criminal investigations are exempt from the definition of public records as investigatory materials. G.L. c. 4, § 7, cl. 26(f) (Public Records Law exempts investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest). Consequently, we decline to provide the requested materials in your public records request.

In addition, many of the records that you requested are exempt from the definition of public records and cannot be obtained through a public records request, even after the

completion of the investigation. The Public Records Law requires this office to explain those exemptions as well.

If the release of photographs or other records would create an unwarranted invasion of privacy, those records are exempt from public dissemination. G.L. c. 4, § 7, cl. 26(c) (“personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.”) Photographs of deceased persons and autopsy records are likewise exempt from the definition of public records under this same provision. G.L. c. 4, § 7, cl. 26(c); *Globe Newspaper Co. v. Chief Medical Examiner*, 404 Mass. 132, 133 (1989).

Recordings of individuals’ voices also are not public records. *Commonwealth v. Winfield*, 464 Mass. 672, 683 (2013) (recording of witness testimony by court reporter was not part of the court records and its dissemination would invade privacy rights).

Statements of identifiable individuals who served as witnesses or who reported information to investigators are likewise exempt from disclosure under the investigatory exception to the Public Records Law. G.L. c. 4, § 7, cl. 26(f) (protection of confidentiality for witnesses to preserve future investigatory techniques). See also *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983) (explanation of “identifying details” and “grave risk of indirect identification” of witnesses).

All notes and memoranda created during the pendency of the investigation constitute work product that are exempt from disclosure under the Public Records Law. G.L. c. 4, § 7, cl. 26(d) (“inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency”); *DaRosa v. New Bedford*, 471 Mass. 446, 461-462 (2015).

Finally, the names of the officers have not been provided publicly under G.L. c. 4, § 7, cl. 26(c): “[i]nformation and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.” At this time, no misconduct relevant to our criminal investigation has been found. (See the attached public report). Without a finding of misconduct, the names of the officers may be withheld as personal information or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. See also G.L. c. 214, § 1B. Further, this matter does not fall within the provision of *Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services*, 484 Mass. 279, 294 (2020) (“the disclosure of police incident reports regarding alleged offenses by police officers and public officials that do not result in arraignment”). It has been our long-standing practice to not publicly identify an officer involved in a fatal police shooting if the shooting does not result in criminal charges. The public interest is not served by disclosing the name of a person not charged with a crime, unless the person has already been publicly identified.

Where this response constitutes a denial of your request, please be advised that you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

Alysia V. Sanchez
Alysia V. Sanchez
Assistant District Attorney
Bristol District